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7 **IN THE UNITED STATES DISTRICT COURT**  
8 **FOR SOUTHERN DISTRICT OF NEW YORK**  
9

Frank Liu Plaintiff, vs. The Nielsen Company (US) LLC and TNC US HOLDINGS Defendants.	<b>Case #1:22-cv-09084-JHR-OTW</b>  <b>Plaintiff's Response in Opposition to Defendants' Letter Motion to Stay Case (ECF 137)</b>
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1 Dear Judge Wang,

2 Defendants **did not** attempt to confer or even reach out to Plaintiff before filing their  
3 Letter Motion to Stay Case. Plaintiff had no idea about their intention to stay the case until  
4 he saw the NYSD\_ECF\_POOL email notifying him of activity in the case.

5 Discovery has already been stayed since at least April 24, 2024 (ECF 84), and now  
6 Defendants want to stay the case completely. Defendants have not met their burden to stay  
7 this case. Plaintiff believes the party requesting the stay must demonstrate **1)** a strong  
8 reason for pausing the case, usually by showing potential irreparable harm if the case  
9 proceeds, **2)** a high likelihood of success on appeal, and **3)** that a stay wouldn't significantly  
10 prejudice the opposing party.

11 Here, Defendants want to stay the case “pending the appointment of pro bono  
12 counsel for the full scope of Plaintiff’s representation.” In ECF 137, Ms. Spangler  
13 mentions Plaintiff’s ECF 131, 132, 134 and 136 filing. After mentioning those specific  
14 filings, Ms. Spangler states, “*Further, Plaintiff indicated in a recent filing (ECF No. 134)*  
15 *that he intends to file a ‘lengthy’ motion to dissolve the Protective Order granted by this*  
16 *Court on September 16, 2024 (ECF No. 110). This would constitute yet another frivolous*  
17 *filing that blatantly ignores the Court’s admonition ‘that any appeal from this [Protective]*  
18 *Order would not be taken in good faith.’ (ECF No. 134 at 3.)”*

19 Due to Ms. Spangler’s “yet another frivolous filing” wording and the proximity of  
20 that passage to Ms. Spangler mentioning of Plaintiff’s ECF 131, 132, 134 and 136 filings, it  
21 would appear Ms. Spangler may be **suggesting** *Plaintiff’s Motion to Strike Defendants’*  
22 *First, Ninth and Tenth Affirmative Defenses* (ECF 131), *Motion Requesting Settlement*  
23 *Conference* (ECF 132), *Plaintiff’s Letter to Judge Wang Regarding Defendant’s*  
24 *Misrepresentations in ECF 128* (ECF 134), and Plaintiff’s *Reply to Defendants’ Response*  
25 *to Plaintiff’s Motion Requesting Settlement Conference* (ECF 136) **as being frivolous**, too.  
26 Due to Ms. Spangler’s accusation that Plaintiff’s filings are “frivolous,” Liu feels obligated  
27 to address his ECF 131, 132, 134 and 136 filings in this response, and by doing so, it does

1 contribute to the overall length of this response. However, Liu writes this response in order  
2 to oppose Ms. Spangler's Letter Motion to Stay, so hopefully Defendants will not also  
3 consider this response "frivolous" even though it may be lengthy and/or voluminous.

4 From Plaintiff's understanding he only had a **limited amount of time** to motion to  
5 strike Defendants' affirmative defenses as outlined in Rule 12(f). Plaintiff believe he has  
6 good faith reasons to strike Defendants' First, Ninth and Tenth Affirmative Defenses, and  
7 believes Defendants have not met their burden under Twombly. Had Plaintiff waited for a  
8 pro bono attorney to represent him, then he would have missed his opportunity to motion to  
9 strike, and Defendants could probably argue any attempts to strike any of their affirmative  
10 defenses was time-barred had Liu waited months to file such a motion.

11 In terms of *Plaintiff's Motion Requesting Settlement Conference*, in Defendants'  
12 Opposition to *Plaintiff's Motion to Lift Stay in Discovery* (ECF 128), Cardelle Spangler  
13 stated they "have been and remain willing to engage Plaintiff in good faith, including in  
14 settlement discussions." Based on what Ms. Spangler wrote, Plaintiff believed it would be  
15 a good idea to ask the Court for another settlement conference now that the Court has  
16 decided on Defendants' motion to dismiss. Plaintiff had hoped parties could resolve the  
17 lawsuit via a settlement conference. After all, there is no specific need for Plaintiff to have  
18 a pro bono attorney for a settlement conference because Plaintiff believes the Magistrate  
19 Judge acts as mediator and speaks to parties individually to try to facilitate a resolution  
20 during a settlement conference. Plaintiff **does not** believe his Motion Requesting  
21 Settlement Conference was "frivolous" because the goal was to try to get the case resolved.

22 Furthermore, since Plaintiff filed a *Motion Requesting Settlement Conference*, and  
23 after reading Defendants' Response (ECF 133), Liu believes he had the right to Reply to  
24 Defendants' Response, so he did so by filing ECF 136. Liu's Reply went into detail  
25 regarding his perspective on why he filed his motion in the first place, and his thought  
26 process that led him to come to the conclusion on Page 4 of ECF 136, "If Nielsen's  
27 attorneys don't want to participate in another settlement conference because Liu does not

1 have a lawyer, then so be it.” In essence, that statement was to let the Court know that Liu  
 2 is OK if the Court declines to order another settlement conference after he considered  
 3 Defendants’ response. Letting the Court know about Liu’s new position in regards to a  
 4 settlement conference is **not frivolous**.

5 While a pro se filing may have more words and more pages to express his or her  
 6 point, that **should not** be something the Court should hold against a pro se party. See  
 7 *Haines v. Kerner*, 404 U.S. 520 (1971), where the US Supreme Court found that pro se  
 8 pleadings should be held to "less stringent standards" than those drafted by attorneys. In  
 9 addition see, *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1959); *Picking v. Pennsylvania R.*  
 10 *Co.*, 151 Fed 2nd 240; *Pucket v. Cox*, 456 2nd 233, that held that Pro se pleadings are to be  
 11 considered without regard to technicality; pro se litigants' pleadings are not to be held to the  
 12 same high standards of perfection as lawyers. Furthermore, in *Picking v. Pennsylvania*  
 13 *Railway*, 151 F.2d. 240, *Third Circuit Court of Appeals*, it was held that, "Where a plaintiff  
 14 pleads pro se in a suit for protection of civil rights, the Court should endeavor to construe  
 15 Plaintiff's Pleadings without regard to technicalities."

16 In regards to *Plaintiff's Letter to Judge Wang Regarding Defendant's*  
 17 *Misrepresentations in ECF 128* (ECF 134), Defendants misrepresented emails Plaintiff sent  
 18 Defendants’ attorneys, and accused Liu of trying to find a loophole around the protective  
 19 order. Liu’s Letter to Judge Wang includes email exhibits that dispute Ms. Spangler’s  
 20 misrepresentations. The Court can review the letter (ECF 134) and Exhibit (ECF 134-1), to  
 21 see for themselves that Defendants misrepresented things in their ECF 128 filing.

22 Furthermore, Plaintiff did not have an opportunity to respond to Defendants’ ECF 128  
 23 before the Court issued their order in ECF 129, just hours later. Since Defendants  
 24 misrepresented things in ECF 128, Plaintiff believes he has a right to set the record straight.

25 In ECF 137, Ms. Spangler writes, “*Further, Plaintiff indicated in a recent filing (ECF*  
 26 *No. 134) that he intends to file a ‘lengthy’ motion to dissolve*”. Defendants have already  
 27 known about Liu’s intent to dissolve the protective order since September 18, 2024.

**Below is a screenshot** of an email Ms. Spangler sent Liu on September 18, 2024 in response to Liu's request to confer on the matter:

Spangler, Cardelle <CSpangler@winston.com>  
to me, Caitlin ▾

Sep 18, 2024, 3:19 PM ☆ 😊 ↩

I understand the purpose of a meet and confer, Mr. Liu, but we are not going to agree to dissolve the protective order our client requested, so there is very little need for this call. Ten minutes will be plenty of time.


Sincerely,

Cardelle


In ECF 137, Spangler argues, “*This would constitute yet another frivolous filing that blatantly ignores the Court’s admonition ‘that any appeal from this [Protective] Order would not be taken in good faith.’ (ECF No. 134 at 3.) It would also require Defendants and this Court to devote additional and unnecessary resources to a matter that has been long since decided by the Court.*” A Motion to Dissolve is not the same as an appeal, especially when the Protective Order was docketed by Defendants on Friday 9/13/2024 (at or around 5:18 PM EST) and appears to have been granted on the following Monday (date stamp of 9/16/2024), without any input from Liu. Moreover, Plaintiff believes a Motion to Dissolve is not the same as an appeal, similar to how a motion to lift stay on discovery is not the same as an appeal.

Defendants use of the protective order goes beyond a Rule 26(c) discovery related protective order because they used the protective order to prevent Liu from reaching out to Ania Howard to provide her moral support after she filed a pro se lawsuit against Nielsen Audio, Inc. for employment discrimination. Liu informed both Cardelle Spangler and Caitlin McCann that the purpose of reaching out to Ms. Howard was not discovery related to Liu’s lawsuit. Liu understood how hard it is for a pro se, and wanted to reach out to Ms. Howard to provide her moral support. Ms. McCann denied Liu’s request (see ECF 134-1).

Nielsen’s use of the protective order is more of a Rule 65 injunction which requires a higher showing of burden by Defendants. Furthermore, back in October of 2024, a former Nielsen employee by the name of Justin Chapman reached out to Liu requesting help, however, Liu was prevented from helping him.

1  Justin Chapman <[REDACTED]@gmail.com> Wed, Oct 23, 2024, 5:41 AM ☆ 😊 [REDACTED] <[REDACTED]@gmail.com> Oct 23, 2024, 11:39 PM ☆ 😊 ⏪ ⋮  
to me ▾ to Justin ▾  
Frank, Hi Justin,  
Is there a chance you can help me with something? I got terminated and need some advice. I would really like to help you, but my understanding is my hands are tied right now due to a protective order preventing me from communicating with any current or former Nielsen employees about Nielsen without Nielsen's permission or their lawyers' presense.  
Sent from my iPhone  
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2  
3  
4  Justin Chapman <[REDACTED]@gmail.com> Wed, Oct 23, 2024, 10:28 AM ☆ 😊 [REDACTED] <[REDACTED]@gmail.com>  
to me ▾ to Justin ▾  
I need to know where should I file for the address of Nielsen headquarters for my EEOC case when I file? If the protective order gets lifted, I will be glad to help you, but right now I am legally prevented by a federal judge.  
Sent from my iPhone Thank you.  
\*\*\*

6 Plaintiff believes Defendants misled the Court in order to get the protective order  
7 granted in the first place. The email titled “How Nielsen destroyed my life – The story of a  
8 former Nielsen Ratings employee’s quest for Justice” had nothing to do with discovery for  
9 Liu’s lawsuit against Nielsen. However because Liu did not have enough time to oppose  
10 Nielsen’s filing before the Court granted the protective order, Liu believes filing a motion to  
11 dissolve would be the proper way to handle things. Furthermore, Nielsen never attached the  
12 email in question in their ECF 107. Had Defendants attached the email, it would have  
13 shown the emails had nothing to do with discovery for Liu’s lawsuit against Nielsen.

14 In ECF 134 and 134-1, Plaintiff has provided enough good faith reasons and specifics  
15 why he needs to motion to dissolve the protective order. For brevity’s sake, he will not  
16 repeat all of his arguments in this filing, and respectfully requests the Court review ECF  
17 134 and 134-1 on why Plaintiff should be allowed to motion to dissolve the protective  
18 order. In addition, Plaintiff requests the Court review ECF 111, as well. Furthermore,  
19 Plaintiff believes the Motion to Dissolve will be decided by Judge Wang, so does not fit the  
20 definition of an appeal.

21 Defendants’ Letter Motion to Stay Case appears to be aimed at preventing Plaintiff  
22 from filing a Motion to Dissolve Protective Order, and aimed at preventing Liu from  
23 showing the Court how Defendants misled the Court on the nature of the emails sent  
24 because the emails were not discovery related to Liu’s lawsuit against Nielsen. Nielsen’s  
25 protective order has prevented Liu from helping Justin Chapman (former Nielsen  
26 Membership Representative), who even reached out to Liu for help with filing with the  
27 EEOC. The purpose of a Rule 26(c) protective order is related to discovery and not a valid

1 substitute for a Rule 65 injunction. Therefore, Liu's intention of filing a Motion to Dissolve  
2 is **not frivolous**.

3 Defendants are using the possibility of a volunteer pro bono lawyer representing  
4 Plaintiff as a reason to stay the entire case. While Plaintiff is *currently* open to the idea of  
5 having a pro bono lawyer represent him for this lawsuit and is waiting to see if a pro bono  
6 attorney reaches out, this openness may **quickly reverse** in the future should Defendants  
7 keep using the Court's granting Liu the possibility of "pro bono" representation against  
8 Plaintiff as a way to prevent Liu's lawsuit from proceeding further.

9 While Defendants point to the possibility of a pro bono attorney representing Plaintiff  
10 as a reason to stay the entire case, they fail to realize that there is no law requiring a pro se  
11 to have to secure an attorney in a civil case before the case is allowed to proceed further.  
12 This is not a class action lawsuit and Plaintiff is not representing anyone but himself.  
13 Moreover, there is no guarantee that a "full scope pro bono attorney" will agree to volunteer  
14 to represent Plaintiff.

15 Defendants are pretty much using the generosity of the Court allowing Plaintiff the  
16 possibility of having a "pro bono" attorney as a wedge issue. The choice appears to be  
17 either: **A)** wait an indefinite amount of time to see if a pro bono lawyer decides to represent  
18 you, which prolongs finding closure and resolution or **B)** Abandon the idea of pro bono  
19 representation, so the case can finally proceed to discovery.

20 While Plaintiff is willing to wait a period of time to see if a pro bono lawyer will  
21 represent Plaintiff, should the case be also stayed, Plaintiff believes that may be a  
22 contributing factor in deciding against having pro bono representation altogether because it  
23 does appear Defendants are trying to use the Court's decision allowing Plaintiff to have pro  
24 bono representation as some type of sanction against Plaintiff. While Plaintiff is willing to  
25 wait some time to see if a volunteer lawyer agrees to represent him, he can not wait forever.

26 Plaintiff is not opposed if the Court wants to extend the stay on discovery for another  
27 30 days, however he strongly opposes the idea of staying this case entirely. Defendants



1 should not be allowed to pause the case from moving forward just because Liu does not  
2 have a lawyer. The right to self-representation is codified in 28 U.S.C. § 1654. If  
3 Defendants really wanted to minimize their litigation costs, they should have supported  
4 Plaintiff’s Motion Requesting Settlement Conference, instead of opposing it just because  
5 Liu does not have a lawyer.

6 In ECF 137, Defendants used *Vista Food Exch., Inc. v. Law* to support their request to  
7 stay Liu’s lawsuit. However for the *Vista* case, the court stayed the case because the lawsuit  
8 was related to a judgment from a previous case to give the defendant more time to “provide  
9 Plaintiff with payment in satisfaction of the judgement or a proposed payment plan for  
10 satisfaction within 30 days of the entry of judgment.” See *Vista Food Exch. v. Law*, 21-CV-  
11 04689 (ALC) (S.D.N.Y. Mar. 31, 2023).

12 Defendants also referenced *Dimps v. NYS Dep't of Corr. & Cmty. Supervision Doccs*  
13 to support their request to stay the case. In the *Dimps* case, the “*Court interprets Plaintiff’s*  
14 *application for time to seek pro bono counsel as a request to stay this proceeding while she*  
15 *attempts to retain an attorney*” and ended up denying her request to stay the case. Here, in  
16 this lawsuit, Liu **did not** file any motions requesting pro bono council and opposes the  
17 Court staying the case. While Liu appreciates the Court granting the possibility for Liu to  
18 have pro bono representation, Liu understands there is no guarantee a volunteer lawyer will  
19 decide to represent him and believes he should be able to continue to litigate his lawsuit as  
20 if he is unrepresented by an attorney.

21 In ECF 137, Defendants argue, “*Finally, the prospect of an amicable resolution will*  
22 *be improved considerably by appointment of pro bono counsel, and further discussions*  
23 *involving an attorney representing Plaintiff may resolve this matter and render unnecessary*  
24 *any further costs on Defendants and this Court.*” From Plaintiff’s perspective, if Liu had a  
25 lawyer representing him, the minimum amount Liu will accept to settle will increase to  
26 more closely reflect his true damages.



1 Defendants have not shown **1)** a strong reason for pausing the case, usually by  
 2 showing potential irreparable harm if the case proceeds, **2)** a high likelihood of success on  
 3 appeal, and **3)** that a stay wouldn't significantly prejudice the opposing party. Point #2  
 4 regarding, "a high likelihood of success on appeal" is in Plaintiff's favor because there is  
 5 simply no law requiring a pro se to have to have an attorney in order to litigate. For Point  
 6 #3, Defendants **can not** show that staying the case for an indefinite period of time won't  
 7 cause significant prejudice significant to Plaintiff, especially since there is no law that  
 8 forces a Plaintiff to accept pro bono representation to continue litigating the case. This  
 9 lawsuit has already gone on for over 2 years. Defendants' Letter Motion to Stay Case is  
 10 actually something that pushes Liu closer to wanting to abandon the idea of having pro  
 11 bono representation altogether.

12 Defendants allege Liu's filings are frivolous so the case should be stayed. If  
 13 Defendants believe Liu's filings are frivolous, then they are welcome to motion for  
 14 sanctions, so the issue can be argued in full by both parties. Other than alleging Liu's  
 15 filings are frivolous, Defendants failed to show how they are frivolous. To allege a filing is  
 16 frivolous under Rule 11, the moving party must show that:

- 17 **1.** The filing has no reasonable basis in law or fact.
- 18 **2.** The filing was presented for an improper purpose, such as to harass, cause  
 19 unnecessary delay, or needlessly increase litigation costs.
- 20 **3.** The claims or arguments are not supported by existing law or a non-frivolous  
 21 argument for extending, modifying, or reversing existing law.

22 The Court can see for themselves if Liu's ECF 131, 132, 134 and 136 filings are frivolous  
 23 or not. Liu has spent considerable amount of time in his Motion to Strike Defendants' First,  
 24 Ninth and Tenth Affirmative Defenses and his Reply in Support of his Motion. And Liu  
 25 does not believe asking the Court for another settlement conference now that the motion to  
 26 dismiss is decided upon is "frivolous," especially when Liu would like to find a resolution  
 27 so he can move on.

1 In ECF 128, Defendants alleged, “*Since then, and despite the unambiguous language*  
 2 *of this Order, Plaintiff has sought to find any loophole around it – reaching out repeatedly*  
 3 *to Defendants’ counsel for consent to communicate with a former Nielsen employee and/or*  
 4 *requesting Defendants’ presence during his communications with said employee*  
 5 *(Defendants refused such requests). Staying discovery until Plaintiff is appointed pro bono*  
 6 *counsel is both necessary and appropriate to limit abuse of the discovery process.”* Since  
 7 Defendants falsely accused Plaintiff of trying to find a loophole around the protective order  
 8 in their ECF 128 filing, Liu submitted his *Letter to Judge Wang* (ECF 134) in order to clear  
 9 up facts. Furthermore, the emails Liu included in ECF 134-1 show that Defendants falsely  
 10 accused Liu of trying to find a loophole around the protective order.

11 Although Liu’s ECF 134 was lengthy, just because a filing is lengthy, it does not  
 12 automatically mean it is frivolous. Perhaps Defendants should consider the possibility that  
 13 a Pro Se, non-lawyer, might not be as concise as a real lawyer. Or perhaps Defendants  
 14 should consider that perhaps a Pro Se may want to get all his points across for the Court to  
 15 consider because if a Pro Se doesn’t try to get all his points across, then what if some of the  
 16 points he left out were actually important points to make that could have helped him?

17 In ECF 128, Defendants argued discovery should be stayed because Liu does not yet  
 18 have a pro bono attorney. In ECF 134, Defendants made it clear they do not want to attend  
 19 a settlement conference because Liu does not have a pro bono attorney. And now in ECF  
 20 137, Defendants want to stay the entire case because Liu doesn’t have a pro bono attorney.  
 21 It would appear Defendants require Liu to have a lawyer to continue suing them. So what  
 22 happens if Liu declines pro bono representation? Does the lawsuit just end?

23 Liu **did not** object to the Court’s Order which extended the stay on discovery until  
 24 March 7, 2025. Furthermore, Liu **does not** object if the Court wants to extend the stay on  
 25 discovery for another 30 days, or perhaps even a bit longer than that. However, Liu **does**  
 26 **object** to the idea of staying the case until pro bono council is assigned. If forced into this  
 27 corner, Liu believes he will no longer be open to pro bono representation and may end up

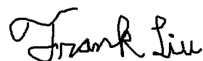
1 requesting the Court to allow the case to proceed to discovery without a lawyer because  
 2 there will no longer be a purpose of waiting for “pro bono” council should Plaintiff assert  
 3 his rights to proceed pro se without representation.

4 “The proponent of a stay bears the burden of establishing its need.” Clinton v. Jones,  
 5 520 U.S. 681, 708 (1997) (citing Landis v. North Am. Co., 299 U.S. 248, 255 (1936) (the  
 6 movant “must make out a clear case of hardship or inequity”)). Nielsen was valued at about  
 7 16 billion dollars in 2022. See [https://www.nielsen.com/news-center/2022/nielsen-announces-](https://www.nielsen.com/news-center/2022/nielsen-announces-closing-of-transaction-with-evergreen-and-brookfield-led-consortium/)  
 8 [closing-of-transaction-with-evergreen-and-brookfield-led-consortium/](https://www.nielsen.com/news-center/2022/nielsen-announces-closing-of-transaction-with-evergreen-and-brookfield-led-consortium/) It would certainly be  
 9 an absurd argument for a multi-billion dollar company to argue hardship or inequity.

10 When determining whether a stay is appropriate, “the competing interests [that] will  
 11 be affected by the granting or refusal to grant a stay must be weighed.” Ali v. Trump, 241 F.  
 12 Supp. 3d 1147, 1152 (W.D. Wash. 2017) (citing Lockyer v. Mirant Corp., 398 F.3d 1098,  
 13 1110 (9th Cir. 2005) (alteration in original)). Defendants are using the possibility of a pro  
 14 bono attorney agreeing to represent Liu as a reason to stay the case. However their request  
 15 to stay the case pushes Liu away from wanting to continue to wait for a pro bono attorney.  
 16 Staying the case will have a detrimental effect to to Liu because with no other option to  
 17 proceed, Liu may either need to wait an indefinite period of time, hoping a pro bono  
 18 attorney will agree to represent him, **or decline** the idea of “pro bono” representation  
 19 altogether.

20 Defendants **have not** met their burden to stay proceedings in this case. so Plaintiff  
 21 respectfully requests the Court **deny** their request to stay the case. Should the Court wish to  
 22 extend the stay on discovery until April 7, 2025, then that is fine with Plaintiff.

23  
 24 Respectfully submitted,

25 

26 Dated 3/5/2025

27 Frank Liu

Pro Se Plaintiff